Supreme Court, U.S.
FILED
AUG 05 2010
OFFICE OF THE CLERK

NO. 10-191

IN THE
SUPREME COURT OF THE UNITED
STATES

HASANAL KEMAL,
PETITIONER,

VS.

ERIC H. HOLDER JR., ATTORNEY GENERAL
RESPONDENT.

ON PETITION FOR A WRIT OF
CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

CINDY S. CHANG, ESQ.
LAW OFFICE OF CINDY S. CHANG
19811 COLIMA ROAD, SUITE 600
WALNUT, CA 91789
TEL: 909-595-9877
Fax: 909-595-9876

ATTORNEY FOR PETITIONER

THE QUESTIONS PRESENTED FOR REVIEW

1. Whether the Ninth Circuit Court erred in upholding the lower court's finding that Petitioner failed to show that he filed for asylum within a reasonable time after the changed circumstances?

2. Whether there is a clear probability that Petitioner will be persecuted if returned to Indonesia as a member of a particular social group, an Americanized Indonesian with US citizen children; and therefore, Petitioner should be granted for the relief in form of withholding of removal?

3. Whether substantial evidence support the granting of the relief under the Convention Against Torture ("CAT") because it is more likely than not Petitioner would be tortured if returned to Indonesia on account of his membership in a particular social group?

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

The undersigned counsel of record for Petitioner, in compliance with Rule 14(b) and rule 29.6 of the Rules of the Supreme Court of the United States, certifies the following listed person and parties have an interest in the outcome of this case:

1. US Court of Appeals for the Ninth Circuit, Respondent
2. Eric H. Holder, Jr., U.S. Attorney General, Respondent
3. Gregory G. Katsas, Attorney for Respondent
4. M. Jocelyn Lopez Wright, Attorney for Respondent
5. Brianne Whelan Cohen, Attorney for Respondent
6. The Board of Immigration Appeals
7. Immigration Judge in Los Angeles, CA
8. Cindy S. Chang, Attorney for Petitioner
9. Hasanal Kemal, Petitioner

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STATEMENT OF JURISDICTION

On May 10, 2010, the US Court of Appeals for the Ninth Circuit ("Circuit Court") denied the Petitioner's petition for panel rehearing. On May 18, 2010, Circuit Court issued a Mandate. This Court's jurisdiction to grant the review on a writ of certiorari is discretional. US Supreme Court Rule 10. The judicial discretion is warranted here because the US Court of Appeals for the Ninth Circuit has entered a decision in conflict with its own decision on the same important matter. US Supreme Court Rule 10 (a).

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS

1. US Supreme Court Rule 10
2. US Supreme Court Rule 10(a)

STATEMENT OF THE CASE

This is an immigration case. Petitioner is a native and citizen of Indonesia. Petitioner left his home country and entered the United States on April 8, 1998, with B-2 tourist visa and never went back to Indonesia since then.

Petitioner was placed into removal proceedings with the issuance of a Notice to Appear, dated March 17, 2003.

Due to the fact that Petitioner has lived in the United States for the past ten years and he has an American citizen child, Petitioner was afraid of

returning to Indonesia because of the potential harms he and his family would suffer, he applied for relief in the forms of asylum, withholding of removal, and CAT.

The Immigration Judge ("IJ") denied the petitioner's applications for relief on October 27, 2005.

Petitioner filed a timely appeal to the Board of Immigration Appeals ("BIA"). The BIA affirmed the decision of the IJ and dismissed his appeal on May 21, 2007.

Thereafter, Petitioner filed a timely petition for review with the US Court of Appeals for the Ninth Circuit ("Ninth Circuit Court"). Unfortunately, the Ninth Circuit Court denied petitioner's petition for review by issuing a memorandum on January 21, 2010. Petitioner then filed a Petition for panel rehearing and that petition was denied on May 10, 2010.

On May 18, 2010, Ninth Circuit Court issued the Mandate.

ARGUMENT

1. Petitioner is eligible for asylum because as filed the asylum application within a reasonable time after the changed circumstances and he has a well-founded fear of future harm if returned to Indonesia.

Petitioner has been lived in the US since 1998 and his son was born here in 2001. After he learned

that in Indonesia the anti-American sentiment has been escalated in 2002 and 2003; his filing of asylum application on September 27, 2004 was within reasonable time.

As the US Department of State's Travel Warning, issued on March 19, 2004, stated that due to the fact that "a security threat extends to private US citizens" from extremist anti-Western terrorist group such as Jemaah Islamiyah, US citizens should "defer all non-essential travel to Indonesia; Petitioner, a Westernized Indonesian, has a well-founded fear of future harm if returned to Indonesia. The changed circumstances should constitute a valid exception to the one-year filing deadline.

After he realized that the country condition has changed to that anti-America, Petitioner filed for asylum as soon as possible.

2. There is a clear probability that the Petitioner will suffer persecution if returned to Indonesia because the Indonesia's country condition is dangerous to the people with Western connection.

Under INA Section 241(b)(3), 8 U.S.C. Section 1231(b)(3), an alien seeking withholding of removal must show a "clear probability" that he will face persecution "because of his race, religion, nationality, membership in a particular social group, or political opinion," in the country to which he will be removed. Also see INS v. Stevic, 467 U.S.407,430 (1984).

Petitioner is a member of a particular social group – an Indonesian parent of a US citizen child.

As a Westernized Indonesian with a US citizen child, Petitioner is a member of a particular social group. As the country's anti-America sentiment suggests, there is a clear probability that Petitioner will suffer future harm if returned to Indonesia on account of his membership in a particular social group, one of the protected grounds as defined by the regulation. Therefore, Petitioner is eligible for the relief in the form of withholding of removal.

3. Petitioner is eligible for withholding of removal under CAT because it is more likely than not that he would be in danger of being subject to torture if returned to Indonesia due to his affiliation with the United States.

Article 3 of the Convention against Torture prohibits the United States from expelling, returning, or extraditing "a person to another state where there are substantial grounds for believing that he would be in danger of being subject to torture."

Under the regulations at 8 C.F.R. Section 1208.16(c), Petitioner is entitled to relief if it is more likely than not that Petitioner will be tortured upon returning to Indonesia. IJ erred in concluding that Petitioner did not meet his burden to show "that the government of Indonesia would acquiesce in any torture of respondent or anyone in respondent's family." Because there is evidence that the Indonesian government is either unable or unwilling to protect Petitioner and his family from the people

who seek to harm him and may even be complicit in attacks on Americans, it is more likely than not that the Petitioner will face torture if returned to Indonesia.

CONCLUSION

Based on the foregoing reasons, Petitioner respectfully requests this Petition for a Writ of Certiorari be granted.

Dated: August 2, 2010

Respectfully Submitted,

By: /S/

Cindy S. Chang, Esq.
Attorney for Petitioner

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
MAY 18 2010
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

HASANAL KEMAL, Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,
Respondent

No. 07-72426
Agency No. A095-618-176
Board of Immigration Appeals

MANDATE

The judgment of this Court, entered January 21,2010, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

Molly C. Dwyer Clerk of Court
Synitha Walker Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
MAY 10 2010
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

HASANAL KEMAL, Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,
Respondent

No. 07-72426
Agency No. A095-618-176

ORDER

Before:

BEEZER, TROTT, and BYBEE, Circuit Judges.

Kemal's petition for panel rehearing is denied.

APPENDIX B

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
JAN 21 2010
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

HASANAL KEMAL, Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,
Respondent

No. 07-72426 Agency No. A095-618-176

MEMORANDUM*

On Petition for Review of an Order of the Board of Immigration Appeals

Submitted January 11,2010**

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* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: BEEZER, TROTT, and BYBEE, Circuit Judges.

Hasanal Kemal, a native and citizen of Indonesia, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's ("IJ") decision denying his application for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"). We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence findings of fact, *Hoxha* v. *Ashcroft*, 319 F.3d 1179, 1182 n.4 (9th Cir. 2003), and de novo questions of law, *Vasquez-Zavala* v. *Ashcroft*, 324 F.3d 1105,1107 (9th Cir. 2003). We deny the petition for review.

The record does not compel the conclusion that changed circumstances excused the untimely filing of Kemal's asylum application. *See* 8 C.F .R. § 1208.4(a)(4); *Ramadan* v. *Gonzales*, 479 F.3d 646, 656-58 (9th Cir. 2007) (per curiam).

Substantial evidence supports the IJ's denial of withholding of removal because Kemal failed to demonstrate it is more likely than not he will be persecuted either as a member of a particular social group comprised of Indonesians with United States citizen children, as a moderate Muslim, or as an Americanized Indonesian. *See Hoxha*, 319 F.3d at 1184-85.

Substantial evidence also supports the IJ's denial of CA T relief because Kemal failed to establish it is more likely than not he would be tortured if returned to Indonesia. *See El Himri* v. *Ashcroft*, 378 F.3d 932, 938 (9th Cir. 2004). Further,

we reject Kemal's contention that the IJ used the wrong standard in denying CAT relief because it is not supported by the record. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error to establish a due process violation).

PETITION FOR REVIEW DENIED.

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

==========

File: A95 618 176- Los Angeles Date:

In re: HASANAL KEMAL May 21 2007

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Ebby S. Bakhtiar, Esquire

CHARGE:

Notice: Sec. 237(a)(I)(B), I&N Act [8 U.S.C. § 1227(a)(1)(B)] In the United States in violation of law

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Indonesia, appeals from the Immigration Judge's decision of October 26, 2005, denying his applications for asylum and withholding of removal under

sections 208 and 241 (b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3), and protection under the Convention Against Torture (CAT) pursuant to 8 C.F.R. §§ 1208 16-18, but granting voluntary departure under section 240B(b) of the Act, 8 U.S.C. § 1229c(b). The respondent's appeal will be dismissed.

We affirm the Immigration Judge's conclusion that the respondent is statutorily ineligible for asylum because he failed to file his asylum application within 1 year after arriving in the United States, and failed to establish an exception to the 1 year filing deadline (I.J. at 2-5). Here, the record reflects that the respondent arrived in the United States on April 4, 1998, but did not file his application for asylum until September 27,2004, more than 6 years later (Exh. 2). *See* section 208(a)(2)(B) of the Act; 8 C.P.R. § 1208.4(a)(2). Notwithstanding the 1-year filing deadline, an asylum application may be considered if the alien demonstrates either the existence of changed circumstances that materially affect his or her eligibility for asylum, or extraordinary circumstances relating to the delay in filing an application within the l-year period, and the application is filed within a reasonable period given those circumstances. *See* section 208(a)(2)(D) of the Act; 8 C.P.R. §§ 1208.4(a)(4)-(5).

On appeal, the respondent argues that the Immigration Judge "failed to take into account the birth of Respondent's child and the danger posed to U.S. citizens, set forth in the Travel Warnings, as a possible *change in circumstance* that would justify an exception to the strict one year bar." (Resp. Br. at

4-5) (emphasis in original). We disagree. The Immigration Judge's decision reflects that she did, in fact, take into account these factors in rendering her decision (I.J. at 2-5). However, even if we were to assume, *arguendo,* that the respondent established changed circumstances, we find mat the respondent failed to file his application for asylum within a reasonable period given those circumstances. On appeal, the respondent asserts that "his claims for relief are founded upon his fears for the safety and welfare of his American born son." (Resp. Br. at 2). However, the record reflects that the respondent's son was born on December 7, 2001 yet the respondent did not file his application for asylum until September 27,2004, nearly 3 years later (I.J. at 4; Exhs. 2,4). Similarly, to the extent the respondent's claim is based on the threat of violence against American and other Western interests in Indonesia, as the Immigration Judge observed, the respondent did not file his application for asylum until nearly 2 years after the terrorist attack in Bali in October 2002, and more than 1 year after the bombing at the Marriott Hotel in Jakarta in August 2003 (I.J at 3-4; Tr. at 27-28; Exh. 3). Accordingly, we affirm the Immigration Judge' s conclusion that the respondent failed to establish an exception to the 1-year filing deadline, and therefore, is statutorily ineligible for asylum.

Turning now to the respondent's application for withholding of removal, an alien shall not be removed to a country if that alien's life or freedom would be threatened on account of his or her race, religion, nationality, membership in a particular social group, or political opinion. *See* section 241 (b)(3)(A) of the Act; 8 C.F.R. § 1208.16(b). However, the alien bears the burden of showing that it is more likely than not that he or she will be persecuted on account of a protected ground upon

removal to that country. *See INS v. Cardoza-Fonseca,* 480 U.S. 421 (1987); *INS v. Stevic,* 467 U.S. 407 (1984); *see also* 8 C.F.R. § 1208.16(b)(2). In this case, we affirm the Immigration Judge's conclusion that the respondent failed to establish that it is more likely than not that he will be persecuted on account of a protected ground, namely as a member of a particular social group comprised of Indonesians with United States citizen children (Resp. Br. at 9), for the reasons set forth in the Immigration Judge's decision (LJ. at 5-9; Exhs. *2,3,5). See also Matter of A-M-E & J-G-U-,* 24 I&N Dec. 69 (BIA 2007); *Matter of C-A-,* 23 I&N Dec. 951 (BIA 2006).

In addition, to the extent the respondent is arguing, in reliance *on Abebe* v. *Gonzales,* 432 F 3d 1037 (9th Cir. 2005), that he is entitled to derivative withholding of removal through his United States citizen son (Resp. Br, at 8-10), we note that both the Act and the regulations refer to the definition of "refugees" in the context of asylum applications, as well as derivatives to such applications. *See* section 208(b)(1) of the Act; 8 C.F.R. § 1208.13(a); *see also* section 101(42) of the Act, 8 U.S.C. § 1101(42) (defining "refugee"). However, unlike asylum, the section of the Act defining "refugees" is *not* referenced in the portion of the Act providing for withholding of removal. Indeed, under the Act, aliens eligible for withholding of removal are not referred to as refugees, nor does the portion of the Act providing for withholding of removal make any provision for derivative claims. *Compare* section 208(b)(3) of the Act, providing that spouses granted *"asylum under this subsection"* may obtain asylum as a derivative) (emphasis added) *with* section 241 (b)(3) of the Act (omitting any provision for derivative claims where an alien is granted withholding of removal). Thus, although there is no specific pronouncement in the regulations on this point,

they do indicate that there are no valid claims for derivative status in regard to withholding of removal. *See* 8 C.F.R. § 1208.1 6(e)(noting that if an asylum applicant is denied asylum in discretion, but granted withholding of removal, the alien's spouse is "thereby effectively precluded admission" to join the alien who has been granted withholding of removal). This regulation therefore contemplates those instances where an alien has been denied asylum in discretion, but granted withholding of removal as a mandatory form of relief. *Id.* The above-cited regulation recognizes that granting an alien *only* withholding of removal would necessarily preclude an alien's spouse and children from admission to the United States, and rather than providing for their admission as "withholding derivatives," instead provides for reconsideration of the discretionary denial of asylum to the lead alien. *Id.* Accordingly, we find that the respondent is not eligible for derivative withholding of removal through his United States citizen son.

Finally, we note that the respondent failed to identify any legal or factual error in the portion of the Immigration Judge's decision denying his application for protection under the CAT (I.J. at 9-10). Accordingly, because the respondent failed to meaningfully apprise this Board of the reasons underlying that portion of his appeal, it will be summarily dismissed. *See* 8 C.F.R. § 1003.I(d)(2)(i)(A); *Matter of Lodge,* 19 I&N Dec. 500 (BIA 1987); *Matter of Valencia,* 19 I&N Dec. 354 (BIA 1986). Thus, we affirm the Immigration Judge's decision denying the respondent's applications for asylum, withholding of removal, and protection under the CAT.

ORDER: The respondent's appeal is dismissed.

FURTHER ORDER: Pursuant to the Immigration

Judge's order and conditioned upon compliance with conditions set forth by the Immigration Judge and the statute, the respondent is permitted to voluntarily depart from the United States, without expense to the Government, within 60 days from the date of this order or any extension beyond that time as may be granted by the Department of Homeland Security (DHS). *See* section 240B(b) of the Immigration and Nationality Act; 8 C.F.R. §§ 1240.26(c), (f). In the event the respondent fails to so depart, the respondent shall be removed as provided in the Immigration Judge's order.

NOTICE: If the respondent fails to depart the United States within the time period specified, or any extensions granted by the DHS, the respondent shall be subject to a civil penalty of not less than $1,000 and not more than $5,000, and shall be ineligible for a period of 1 0 years for any further relief under section 240B and sections 240A, 245, 248, and 249 of the Immigration and Nationality Act. *See* section 240B(d) of the Act.

FOR THE BOARD

IMMIGRATION COURT
606 SOUTH OLIVE ST., 15TH FL
LOS ANGELES, CA 90014

In the matter of
KEMAL, HASANAL
Respondent

Case No.: A095-618-176

IN REMOVAL PROCEEDINGS

ORDER OF THE IIMMIGRATION JUDGE

This is a summary of the oral decision entered on Oct 26, 2005.
This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

[ ] The respondent was ordered removed from the United States to or in the alternative to

[ ] Respondent application for voluntary departure was denied and respondent was ordered removed to
Or in the alternative to

[x] Respondent application for voluntary departure was granted until 12/27/2005 upon posting a bond in the amount of $ 500.00 with an alternate order of removal to Indonesia

Respondent's application for:

[x] Asylum was ( ) granted (x) denied ( ) withdrawn

[x] Witholding of removal was ( ) granted (x) denied ( ) withdrawn

APPENDIX E

[ ] A waiver under section _____ was ( ) granted ( ) denied ( ) withdrawn

[ ] Cancellation under section 240A (a) was ( ) granted ( ) denied ( ) withdrawn

Respondent's application for:

[ ] Cancellation under section 240A (b) (1) was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Cancellation under section 240A (b) (2) was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Adjustment of status under section _____ was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[x] Respondent's application of (x) withholding of removal ( ) deferral of removal under article III of the Convention Against Torture was ( ) granted (x) denied ( ) withdrawn.

[ ] Respondent's status was rescinded under Section 246.

[ ] Respondent is admitted to the United States as A _____ until _____

[ ] As a condition of admission, respondent is to Post a $ _____ bond.

[ ] Respondent knowingly filed a frivolous asylum application after proper notice.

[ ] Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration judge's oral decision.

[ ] Proceedings were terminated.

[ ] Other: _____

Date: Oct 26, 2005

_____
CHRISTINE A. BITHER
Immigration Judge

Appeal: Waived / Reserved (circle) by Resp Appeal due by: 11/28/2005

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
Los Angeles, California

File A 95 618 176 October 26, 2005

In the Matter of HASANAL KEMAL, Respondent

IN REMOVAL PROCEEDINGS

CHARGE: Section 237(a) (1) (B) of the Immigration and Nationality Act.

APPLICATIONS: Asylum, withholding of removal, protection under the Convention Against Torture, voluntary departure.

ON BEHALF OF RESPONDENT:
David M. Haghighi, Esquire

ON BEHALF OF DEPARTMENT HOMELAND SECURITY: Jailuk Maksrivorawan, Esquire

ORAL DECISION OF THE IMMIGRATION JUDGE

Respondent in this matter was charged with being removable from the United States by the issuance of a March 17th, 2003 Notice to Appear. The charges have been sustained by clear and convincing evidence both by respondent's admissions and concessions as well as his testimony and applications before this Court.

Respondent is a native and citizen of Indonesiawho entered the united States on or about April 4th, 1998 as a non- immigrant visitor for business or pleasure with authorization to remain until October 3rd, 1998. Respondent, however, remained in the United States beyond the authorized October 3rd, 1998 date without permission from the United States Government. Accordingly, respondent is present in the United States in violation of Section 237(a) (1) (B) of the Immigration and Nationality Act.

Respondent has applied for the relief of asylum, withholding of removal, protection under the Convention Against Torture as well as voluntary departure.

In support of his application respondent testified before this Court on today's date, October 26th, 2005. Respondent's testimony has been typed in a two-page document. Such testimony will be incorporated herein as part of the decision, however, it will not be restated herein. The document titled Testimony is contained in the record and both counsel have been provided with a copy. In addition, document titled Law is a two page document contained in the record setting forth the law applicable to this case. The two page document is incorporated herein but will not be restated herein.

Respondent in this matter has applied for the relief of asylum, withholding of removal and protection against the Convention Against Torture and voluntary departure.

Respondent has testified in a credible manner. Respondent's application for asylum will be denied for failure to establish that he filed in a timely manner for asylum. An applicant for asylum must demonstrate by clear and convincing evidence that he or she filed the

asylum application within one year of the date of the applicant's arrival in the United States. If not, then the applicant must establish that he or she qualifies for an exception to the one-year deadline. 8 C.F.R. section 1208.4(a) (2) 2004. In this case, respondent last arrived in the United States on April 4th, 1998. The asylum application was not filed until September 27th, 2004. As a result, respondent is required to demonstrate that he qualifies for an exception to the one-year filing rule before the merits of an asylum application may be considered. An applicant's failure to file an asylum application within the one-year period may be excused by either changed circumstances or extraordinary circumstances. 8 C.F.R. 1208.4(a) (4) and (a) (5).

Respondent in this matter has not establish either changed circumstances or extraordinary circumstances that would excuse the late filing of his asylum application. Changed circumstances refers to circumstances materially effecting the applicant's eligibility for asylum including, but not limited to, changed conditions in the alien's native country. In this matter, respondent asserted that he determined that he should file for asylum after he became aware of the bombings in Indonesia. Respondent did not apply for asylum after the terrorist attack in Bali in October 2002 but he determined that after the August 2003 bombings he should apply for asylum. Nevertheless, he's not submitted an asylum application until September 27th, 2004 more then one-year after the event that he claims caused him to decide to file for asylum.

The respondent appeared in court several times during that one-year period. If you mark the one-year period after the August 2003 bombings, at the beginning of the period, the Department of Justice has set forth in Federal Register that six months beyond the event

causing an applicant to file asylum might be considered reasonable but that "clearly waiting a six month or longer after expiration or termination of said would not be considered reasonable". See the Federal Register Volume 65 #235, December 6th, 2000. While that Federal Register comment refers specifically to filing after the expiration of one's status it's applicable here because the Department has considered that six months is a reasonable time to file for asylum.

Respondent also testified that after he had a son born here in the United States he determined that he should apply for asylum. His son, however, was born in December 2001. Respondent said that after that he and his wife were fearful of returning to Indonesia, nevertheless, they did not apply for asylum until they appeared before this Court in September of 2004.

Moreover, it's clear that respondent came to the United States for economic reasons. He said the situation in Indonesia was bad. He stated that he was concerned after the Bali bombings in October 2002 he did not, however, apply for asylum at that time nor has he explained why he didn't apply for asylum at that time. Respondent waited until after he was placed in Immigration proceedings through the special registration program to apply for asylum and has not established that changed circumstances as defined in regulations caused him to file his application after the deadline. Accordingly, his application for asylum will be denied for failure to establish that he filed within the one-year deadline.

Respondent is, however, still eligible for withholding of removal and protection under the Convention Against Torture. Respondent's application for withholding of removal will be denied for failure to

establish a clear probability that the will face persecution in Indonesia. Respondent has asserted to grounds of possible persecution when he returns to Indonesia. Respondent believes he might be terrorized because he has an American child and respondent is also concerned because he, himself, has become Americanized.

In addition, respondent expressed concern about his American citizen child's safety in Indonesia. Respondent testified that he has two children, first son, Pajar, who's currently 11 years old is born in Indonesia. His second son was born here in the United States in December 2001. Respondent explained that he believes that his 3-year-old, who was born here in the United states, will be targeted and harmed in Indonesia. Respondent believes that he, himself, could also suffer harm because of his United States citizen child named Kautsar. Respondent has submitted numerous articles and argued in closing that Americans who travel to Indonesia are in great danger. In fact, respondent has submitted a travel warning issued by the United States Department of State on May 10th, 2005 advising Americans not to travel to Indonesia. See Exhibit 3 page 1 and 2. In addition, respondent submitted a short newspaper article titled "Indonesia warns of more terrorists attacks". See Exhibit 3, page 75, 76. These articles reflect, however, that Americans can possible be targeted in Indonesia and have been targeted in Indonesia. The travel warning sets forth that "attacks could occur at any time and could be directed against any location including those frequented by foreigners and identifiably American or other Western facilities or business in Indonesia. Such targets could include, but are not limited to, places where Americans and other Westerns live, congregate, shop or visit including hotels, clubs, restaurants, shopping centers, identifiably Western businesses, housing compounds, transportation

systems, places of worship, public schools or public recreational events". See Exhibit 3, page 1. In other words, this travel warning sets forth that if Americans visit certain places and are identifiably Americans they could possibly be targeted. There's no reason, however, to believe that a 3-year-old child who speaks Indonesian would be identified as an American. Nor is there any reason to believe that respondent would be congregating in shops where American and Westerners live, congregate, such as hotels, clubs, restaurants, shopping centers, identifiably Western business centers, housing compounds, transportation systems, places of worship, schools or public recreational events. Respondent testified that he comes from a very small town and that when he returns to Indonesia he would likely return to that town with his two children.

Respondent identifies his town as a small town and he did not state that it was a tourist area. That travel warning document also sets forth that there are other places of concern. The document highlights such areas that Americans should avoid as Aceh, Papua, Maluku and Central and Southeast Sulawesi. Respondent, however, is from Jabar. Nothing about Jabar has been identified as an area of high concern.

In addition, the other documents submitted by respondent are Exhibit 2, page 75, 76 sets forth that the most recent bombing was masterminded by a suicide bomber and it was an area of "crowded restaurants and tourist areas of Bali". The document also sets forth that there was a bombing in a resort area. Once again, nothing suggests that any Americans are being targeted in Jabar.

More importantly, nothing in this record suggests that a 3-year-old child who speaks Indonesian, who is Indonesian and Muslim, who's parents are Indonesian

would be targeted for harm by any terrorists group.

Respondent testified that Indonesian is the language that is spoken in the home. Respondent is concerned because he believes that he and his child has become Americanized. However, a 3-year-old child would easily adapt to whatever area in which his parents live. Thus, returning to the small hometown of respondent's parents *in* no way establishes that respondent's son Kautsar would be harmed in any manner. Respondent also fears that he personally would be terrorized because he has an American child. Respondent appears to not establish a clear probability that he will in any way be terrorized because he has an American hild. There's nothing in the record to reflect that parents of children born *in* the United States are terrorized when they return with their children to Indonesia. Respondent, himself, is a Muslim. He testified that he's a moderate Muslim and is not a fundamentalist. The record reflects that there are millions of moderate Muslims living in Indonesia and respondent and his family would certainly blend *in* with the other moderate Muslims.

Respondent's older son is currently 12 years old and respondent is concerned because his older son has become Americanized. However, respondent's older son is an Indonesian. He does speak Indonesian. He didn't come to this country till he was 4 years old although he has received some American education, once again, Indonesian is the language spoken in the home. This child can easily adapt to returning to Indonesia and living with

his parents in a small town. There's no reason to believe that anyone would impute some Western lifestyle and terrorize and harm a 12-year-old simply because he lived in the United States for a period of time.

Respondent was also concerned that if he used the United States citizen passport to return to Indonesia with his son kautsar the authorities would know that he has an American born child. Respondent also testified that he could likely get an Indonesia passport for his son. That would certainly alight any fears he has about traveling with the American passport. In any event, respondent was clear that he does not fear the authorities in Indonesia he fears the fundamentalist terrorists groups. There's nothing in this record that indicates that if respondent shows the United States citizen passport in the Indonesian airport that he would be targeted and harmed by a terrorist group.

In short, there's nothing in this record to reflect a clear probability of harm anyone would harm a 3-year-old Muslim child in a small town in Indonesia. The respondent testified he would return. As such, his application for withholding of removal will be denied.

Respondent's application for protection under the Convention Against Torture will be denied. Respondent testified that he does not fear the authorities in Indonesia. He appears to assert that the authorities may not be able to control the fundamental terrorists in Indonesia because of the bombings that he read about. However, there's nothing in this record to establish the government of Indonesia would acquiesce in any torture of respondent or anyone in respondent's family. Thus, his application for protection under the Convention Against Torture will be denied.

Respondent's application for voluntary departure will be granted. Respondent is required to depart the United within 60 days. That's on or before December 27th, 2005. He must post a bond within five business days in

the amount of $500. Failure to depart as required or failure to post a bond will result in an automatic order of deportation or exclusion without further proceedings.

ORDER

IT IS HEREBY ORDERED that the respondent's application for asylum is denied.

IT IS FURTHER ORDERED that the respondent's application for withholding is denied.

IT IS FURTHER ORDERED that the respondent's application for protection under the Convention Against Torture is denied.

IT IS FURTHER ORDERED that the respondent's application for voluntary departure is granted.

CHRISTINE A. BITHER
Immigration Judge